

Kavinoky, Cook, Hepp, Sandler, Gardner & Wisbaum & Recorded

RECORDATION NO. 8414-A JUL 19 1976-12 35 PM

HAROLD V. COOK, 1886-1948

EDWARD H. KAVINOKY

WILLIAM H. HEPP

CHARLES R. SANDLER

ARNOLD B. GARDNER

WAYNE D. WISBAUM

PETER D. COOK

ALLAN R. LIPMAN

SAMUEL L. SHAPIRO

RONALD B. FELMAN

JOSEPH G. SACCO

DAVID L. JONES

RONALD L. JAROS

JOSEPH E. ZDARSKY

GENE M. SIMON

CARMEN M. PIERI

RUSSELL J. PIERI

JOHN D. WLADIS

ANTHONY J. LATONA

LINDA A. HEART

RICHARD B. BERMAN

JUL 19 1976-12 35 PM

INTERSTATE COMMERCE COMMISSION July 15, 1976

6-2014041

No. 8414-A

Date JUL 19 1976

Fee \$ 150-

Filed & Recorded

JUL 19 1976-12 35 PM

ICC Washington, D. C.

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

155 DELAWARE AVENUE

BUFFALO, N. Y. 14202

716) 856-9234

CABLE ADDRESS KAVCO

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3. Mortgage, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to 40 70 ton capacity wood-chip cars;
4. Assignment, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to a certain lease agreement, as amended, with respect to such cars;
5. Mortgage, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to 100 100 ton steel rotory dump coal gondola cars; and
6. Assignment, dated June 30, 1976, executed by Firstmark Morrison, Inc. in favor of Firstmark Credit Corporation with respect to a certain lease agreement of such cars.

I have enclosed our firm's check made payable to the Interstate Commerce Commission in the amount of \$150.00 in payment of the filing fees that you advised me are necessary. If there are any additional fees to be tendered by us, please let me know.

I have also enclosed a stamped, self-addressed envelope to be utilized by you when you return the recorded instruments to me.

I thank you for your courtesy and cooperation in this matter.

Very truly yours,

KAVINOKY, COOK, HEPP, SANDLER, GARDNER & WISBAUM

By:


Russell J. Pieri

RJP/sd

Encl.

8414
RECORDATION NO. 8414 Filed & Recorded

JUL 10 1976-12 55 PM
INTERSTATE COMMERCE COMMISSION

A S S I G N M E N T

KNOW ALL MEN BY THESE PRESENTS, that in consideration of One and More Dollars (\$1.00 and More), the receipt whereof is hereby acknowledged, the undersigned, FIRSTMARK MORRISON, INC., a New York corporation, having its principal office and place of business at 107 Delaware Avenue, Buffalo, New York, agrees to assign and does hereby assign a certain Lease Agreement, dated October 29, 1971, and recorded with the Interstate Commerce Commission on November 19, 1971, under Recordation No. 6428, by and between Delaware Freight Car Corp (now merged into the undersigned) as lessor and Yankeetown Dock Corporation as lessee (hereinafter the "Lease"), for the rental of 100 100 Ton Steel Rotary Dump Coal Gondola Cars, the rental payments and all other sums due and to become due under the Lease, the cars rented under the Lease and any guaranty of or collateral securing the performance and/or observance of the obligations under the Lease, to FIRSTMARK CREDIT CORPORATION, having its principal office and place of business at 110 East Washington Street, Indianapolis, Indiana, as security for the payment of certain indebtedness in the principal amount of \$1,039,098.00 evidenced by a certain Note of the undersigned of even date herewith, and any and all sums due and to become due under such Note, together with any and all renewals or extensions or consolidations thereof and interest thereon and all sums which the undersigned at any time may be liable to pay hereunder (all of which is hereinafter referred to as the "Indebtedness").

The assignee is hereby authorized to take such steps from time to time as in its discretion it shall deem advisable to

declare a default on the part of the lessee under the Lease, or in the event of a default, to enforce the covenants and conditions of the Lease or any guaranty or collateral document securing the Lease and collect the sums payable thereunder. However, the assignee shall be under no obligation to take any steps, and no liability whatever shall arise on the part of the assignee, either to take or to refrain from taking any action under the Lease or under any guaranty or collateral document securing the Lease.

All installments of rent received by the assignee under the Lease shall be applied against first, accrued installments of interest payable by the undersigned under said Note, and second, against the accrued installments of principal payable by the undersigned under said Note; and any such sum which is received by the assignee in settlement for a lost, destroyed or irreparably damaged car shall be applied in reduction of the principal indebtedness of the undersigned under said Note.

The undersigned covenants and agrees that it will pay promptly all taxes and assessments which may be imposed upon the cars or for the use thereof, or upon the earnings arising therefrom or the operation thereof, or upon the assignee by reason of its interest therein, by any jurisdiction in which the cars are operated and will keep all of the cars at all times free and clear of all taxes, assessments or other claims which might become a lien or charge upon any of the said cars equal or superior to the interest of the assignee therein; and if any such tax, assessment or claim shall have been charged, levied or enforced against the assignee directly and paid by the assignee, the undersigned shall reimburse the assignee on presentation of invoice therefor.

The undersigned covenants and agrees that it will cause all of the cars to be kept in good repair and proper running order and that it will cause any car which has been damaged by any cause, except any car which is lost, destroyed or irreparably damaged, to be promptly repaired. Without limiting the generality of the foregoing, the undersigned covenants that it will take or cause to be taken from time to time such steps as may be required to make all the cars conform to Federal Railroad Safety Appliance Act of 1970.

The undersigned assumes all responsibility for and will indemnify and save harmless the assignee from any and all damages, costs, royalties, claims, suits, actions, judgments and expenses arising in any way out of the charges of infringement of patents which may be alleged to cover the cars or parts thereof, or the construction thereof; and upon receiving notice of any claims of patent infringement presented to the assignee with respect to the cars or parts thereof, or the construction thereof, the undersigned shall promptly undertake and assume the defense thereof. The provisions of this paragraph shall continue in full force and effect notwithstanding the full payment of the Indebtedness secured hereby, and the satisfaction and discharge of the said Note given by the undersigned.

The undersigned with all convenient speed will cause this Assignment to be filed with the Interstate Commerce Commission for recordation in accordance with 49 CFR §11116; and from time to time, in addition to such filing, the undersigned will cause the Lease, this Assignment, and a certain Mortgage, of even date herewith, of the said cars, and any supplement or supplements thereto, to be filed in such other place or places as may be rea-

sonably requested by the assignee, so that the Lease, this Assignment and the said Mortgage, and any supplement or supplements thereto, shall at all times be duly filed, registered, docketed, or recorded in such manner and in such places as to comply with all applicable laws in order to publish notice of and to protect the assignee's interest in the cars; and from time to time the undersigned will execute any and all further instruments that reasonably shall be requested by the assignee for such publication and protection of its interest; and the undersigned will promptly furnish to the assignee certificates or other evidences satisfactory to the assignee of said filing, registration, docketing and recording. The undersigned will pay all costs, charges and expenses incident to all such filing, registration, docketing and recording.

Notwithstanding anything to the contrary contained herein, this Assignment is made and accepted upon the express condition, understanding and agreement that neither the assignor nor any legal representatives, successors or assigns of the assignor (hereinafter the "Exculpated Class") shall have or incur any liability with respect to this Assignment or the Indebtedness secured hereby, and no member of the Exculpated Class shall in any way be obligated to perform any of the terms, covenants, agreements and conditions hereof or be responsible or liable for any other warranties or representations hereof. By acceptance hereof, the assignee and any other holder of this Assignment or of the Indebtedness secured hereby, upon any default hereunder or thereunder, agree not to demand, take or enter any claims or judgments against any member of the Exculpated Class, but rather to look solely to the security described herein and in a certain Mortgage of even date

herewith with respect to the above-described cars for each and every remedy of the assignee hereunder or thereunder. This exculpation of the liability of the Exculpated Class shall be without any exceptions whatsoever.

IN WITNESS WHEREOF, the assignor, FIRSTMARK MORRISON, INC., has caused this Assignment to be signed by its proper officer thereunder duly authorized and its corporate seal to be hereunto affixed on the 30th day of June, 1976.

[Seal]

FIRSTMARK MORRISON, INC.

By Rubin Litterman
Treasurer

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:

On this 30th day of June, 1976, before me came RUBIN LITERMAN, to me known, who, being by me duly sworn, did depose and say that he resides at No. 145 Brooklane Drive, Amherst, New York; that he is the Treasurer of FIRSTMARK MORRISON, INC., the corporation described in and which executed the foregoing Assignment; that he knows the seal of said corporation; and that the seal affixed to said assignment is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Raymond H. Litterman
RAYMOND H. LITTERMAN

NOTARY PUBLIC
JUN 30 1976